least 1955 and despite early pre-emptory rebuffs by Michigan Wisconsin Pipe Line Company (Mich Wis), has been vigorously seeking to obtain natural gas for the Upper Peninsula (R. 156-158, 160-161). As a result, the Federal Power Commission (Commission), in denying in 1958 competing natural gas pipe line company applications for authority to serve the central Wisconsin area (but not the Upper Peninsula), stated that it would expect new applications also to make provision for a gas supply for the Upper Peninsula. See *American Louisiana Pipe Line Company, et al.*, 20 F.P.C. 575, 593 (1958).

Thereafter, having agreed to purchase Canadian gas from Midwestern Gas Transmission Company (Midwestern) for service to central Wisconsin, Mich Wis entered into negotiations with Michigan Gas for the sale of gas to Michigan Gas for the Upper Peninsula (R. 166-167). Mich Wis offered to sell gas to Michigan Gas for the Upper Peninsula at an average price of 46 cents per Mcf (R. 167), and to construct the necessary branch-line facilities from Menominee, Michigan, into the Upper Peninsula in order to provide *city-gate* service, i.e., delivery at the outskirts of the various communities and locations to be served by Michigan Gas (R. 55-56, 166-167, 275-282).

When these negotiations were on the verge of successful completion, however, Mich Wis abruptly withdrew its offer (R. 167-168) and instead applied to the Commission for authority to sell the gas for the Upper Peninsula to Michigan Consolidated Gas Company (Consolidated), a sister company in the American Natural Gas System, with delivery of the gas to take place at Menominee, Michigan, many miles away from the Upper Peninsula markets.[7] Consoli-

[7] Consolidated had never previously manifested any interest in the Upper Peninsula (R. 128, 158, 162, 168). It had no properties or operations there and its principal market area is in Detroit, some 400 miles away.

Mich Wis' sudden termination of its negotiations with Michigan Gas and injection of Consolidated, its sister com-

dated, in turn, would construct and operate the entire branch-line facilities from Menominee, north to the town borders of the communities in the Upper Peninsula. In addition, Consolidated would sell gas to Michigan Gas only for the firm requirements of the seven communities which it is franchised to serve (*supra*, p. 3). Consolidated itself would sell gas to the City of Escanaba and Cleveland Cliffs (R. 10-11). Consolidated proposed to charge Cleveland Cliffs 52 cents per Mcf and Escanaba and Michigan Gas 70 cents per Mcf (R. 13).[5]

Michigan Gas opposed this proposal. In addition to urging that it, rather than Consolidated, should serve the Upper Peninsula, Michigan Gas asserted that the terms of Mich Wis' proposal resulted in unlawful discrimination

---

pany, is explicable as to Mich Wis only as an effort to insulate itself from its established branch-line extension practice, *infra*, pp. 8-9 (R. 175). From Consolidated's viewpoint, if its rates for service to the Upper Peninsula, resulting from the burden of the entire cost of the branch lines were too high, and made the project infeasible, Consolidated stood to gain a substantial volume of gas needed for its Detroit market, a need which was particularly acute in view of Consolidated's loss of gas as a result of the Commission's authorization to Panhandle Eastern Pipe Line Company to abandon service to Consolidated (*Michigan Consolidated Gas Company* v. *Federal Power Commission*, 283 F. 2d 204 (1960), certiorari denied, 364 U. S. 913 (1960)). Consolidated's agreement with Mich Wis provided that Consolidated could purchase for its Detroit market all of the gas destined for the Upper Peninsula if that project failed (R. 219; see, also, R. 169).

[5] These rates were not, and could not be, supported on the basis of cost of service (R. 94-97). They were so fixed by Consolidated on the basis that it needed an average of 58 cents per Mcf from the total sales in the Upper Peninsula, with the price Cleveland Cliffs being willing to pay determining the price to be exacted from Michigan Gas and Escanaba (R. 96, 169). With the price to Cleveland Cliffs at 52 cents per Mcf—6 cents per Mcf below the average claimed to be needed—the price to Michigan Gas and Escanaba, based on the volumes of gas involved, became 70 cents per Mcf—12 cents above the average.

prohibited by Section 4(b) of the Natural Gas Act, irrespective of whether the gas was allocated to Consolidated or Michigan Gas. Under Mich Wis' proposal, the Upper Peninsula markets would bear through rates the entire cost of the branch line from the pipeline delivery point (Menominee) to points of delivery in the Upper Peninsula[9] and at the same time pay Mich Wis the same rate for such pipeline delivery that all other customers pay for delivery over branch lines constructed by Mich Wis in accordance with its branch-line extension practice. Under this practice, when the branch line is regarded as part of a "project", Mich Wis constructs it all the way to the city gate and provides city-gate delivery; otherwise, Mich Wis constructs the line part of the way to the city gate as determined by its so-called "10-cent" formula and provides delivery at the point where Mich Wis' construction terminates.[10] The costs incurred by Mich Wis in constructing

---

[9] Michigan Gas also asserted and demonstrated at the Commission hearings, that the rate proposed by Consolidated, resulting from the imposition of the complete burden of the costs of the branch-line facilities from Menominee upon the Upper Peninsula, economically precluded the purchase of gas from Consolidated (R. 171). Michigan Gas' return under the Mich Wis-Consolidated proposal, after five years of natural gas operations, would be less than the costs Michigan Gas would have to pay to raise the capital to build the distribution systems in the communities to be served (R. 171). Additionally, under the Mich Wis-Consolidated proposal natural gas would not fulfill its necessary purpose. At the 70 cents per Mcf rate, there could be no development of the industrial potential of the Upper Peninsula—either firm or interruptible (R. 171).

[10] Under the "10-cent" formula, the investment Mich Wis is required to make in branch line is computed by multiplying the estimated third-year sales to the customer by 10 cents and dividing the result by 15%. See *Michigan Wisconsin Pipe Line Co.*, 21 F.P.C. 552, 558, fn. 5 (1959); see, also, *Michigan Wisconsin Pipe Line Co.*, 24 F.P.C. 177 (1960), where despite the numerous questions raised as to scope and impact of this formula, the Commission refused to modify it and applied it without any change.

and operating these branch lines become a system cost, shared by all customers including Michigan Gas as an existing customer of Mich Wis in the Lower Peninsula area of Michigan.

To eliminate the unlawful discrimination thus inherent in Mich Wis' proposal, Michigan Gas suggested,[11] first, that if the Upper Peninsula markets were to pay the same rate as all other customers, Mich Wis' branch line extension practice should also be made applicable to the Upper Peninsula. Alternatively, Michigan Gas suggested that if the Upper Peninsula markets were to receive delivery at the Mich Wis pipeline (at Menominee) and thus bear the entire burden of the construction and operation of the necessary branch lines, a rate differential reflecting the different conditions of service should appropriately be provided (R. 173-175).[12]

The Commission in its order and accompanying Opinion No. 331, issued October 31, 1959, directed Mich Wis to deliver gas for the Upper Peninsula to Michigan Gas, rather than to Consolidated (R. 364, 376, 387-388, 395). However, it also directed that Michigan Gas should receive the gas at Menominee, thereby requiring the Upper Peninsula to bear the full cost of the branch line from Menomi-

[11] These suggestions were adopted by Michigan Gas from among those enumerated by the Commission for the elimination in a parallel situation in 1950, which, coincidentally also involved both Mich Wis and Michigan Gas. *Michigan Wisconsin Pipe Line Co.*, 9 F.P.C. 127, 134 (1950).

[12] The principal feature of this suggestion was the removal of a limitation upon the number of days that the maximum daily quantities of natural gas could be used. The ability to use the maximum daily quantities each day of the year produced larger annual volumes which would, under the normal operation of the demand-commodity rate form embodied in Mich Wis' rate schedule, lower the average cost per Mcf of gas to the Upper Peninsula, thus providing the rate differential.

nee, and pay for such pipeline delivery the same rate paid by all other customers of Mich Wis receiving delivery at the end of a branch line constructed by Mich Wis (R. 376). In so directing, the Commission did not deny that this direction resulted in unlawful discrimination against the Upper Peninsula, independently of Michigan Gas' suggestions. Despite this, however, the Commission assumed that a ruling on Michigan Gas' alternative suggestions was all that was required for disposition of the problem. Accordingly, holding that adoption of either of Michigan Gas' suggestions would unduly favor the Upper Peninsula, the Commission made no inquiry into other possible means for eliminating the unlawful discrimination, nor undertook to eliminate the discrimination by some appropriate means (R. 370-379).

On December 29, 1960, the Commission denied Michigan Gas' application for rehearing (R. 428-447). Commissioner Connole, dissenting, pointed out the necessity for the elimination of the discrimination (R. 446-447). On review, the Court of Appeals affirmed (App. A, *infra*, pp. 1a-5a).

REASONS FOR GRANTING THE WRIT

1. This case presents the question whether the Commission has a duty under the Natural Gas Act to eliminate undue discrimination only if appropriate means therefor are suggested by one of the parties or whether, if such suggestions are found to be inadequate, the Commission has the additional and further responsibility itself to devise proper means to eliminate the discrimination.

In assuming that the Natural Gas Act imposes only the limited duty upon the Commission, both the Commission and the court below committed blatant error. Section 4(b), *supra*, p. 2, the section dealing with unlawful discrimination, plainly does not support any such limited reading of the Commission's responsibility. On the contrary, that section by prohibiting unlawful discrimination in broad and sweeping terms, clearly imposes an affirmative respon-

sibility upon the Commission to eliminate such discrimination and leaves no room for evasion of this duty on the plea that appropriate means for the elimination have not been suggested. See, also, Section 5(a) of the Natural Gas Act, 15 U.S.C. 717d(a).

This Court has already recognized the breadth and importance of Section 4(b). Not only has the Court consistently noted that Section 4 is "the heart of the Act" (*Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 611, 612 (1944); *Atlantic Refining Co.* v. *Public Service Commission of the State of New York*, 360 U.S. 378, 388 (1959)), but it has reiterated repeatedly that the primary purpose of the Act is to protect consumers against exploitation at the hands of natural gas companies. *Federal Power Commission* v. *Hope Natural Gas Co.*, *supra* at p. 610; *Phillips Petroleum Co.* v. *State of Wisconsin*, 347 U.S. 672, 685 (1954); *Sunray Mid-Continent Oil Co.* v. *Federal Power Commission*, 364 U.S. 137, 147 (1960); *Federal Power Commission* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 19 (1961).

An inherent facet of such purpose necessarily is protection against unlawful discrimination, inasmuch as its consequences frequently are more virulent and invidious than excessive prices alone. The evil of discrimination has been recognized from earliest days as one of the prime factors necessitating utility regulation and the inhibitions against unlawful discrimination—such as those in Section 4(b) have been included in virtually all regulatory statutes. The Commission itself has long recognized but disregarded in the present case—that the leverage inherent in the power to discriminate, if uncontrolled, is such as to enable the utility to control and impede—indeed, even entirely to frustrate—the economic growth and development of those affected thereby. *Otter Tail Power Company*, 2 F.P.C. 134, 142-143 (1940).

The Commission's dereliction of its duty in this case, therefore, patently presents a question of importance gen-

erally and in the administration of the Gas Act. If the Commission's duty as to unlawful discrimination were limited, as assumed by the Commission and the court below, the consumers would be subject to the very exploitation which the Act was designed to prevent. The result would be a substantial gap in "the comprehensive and effective regulatory scheme" intended by Congress. *Federal Power Commission* v. *Transcontinental Gas Pipe Line Corp., supra*, at p. 19; *Panhandle Eastern Pipe Line Company* v. *Public Service Commission*, 332 U.S. 507, 520 (1946).

2. The Commission's failure to fulfill its responsibility under the Act here produces the very consequences of uncontrolled discrimination that the Act is designed to prevent. To produce the hoped-for benefits for the Upper Peninsula, the natural gas must be available at a price that induces potential buyers to become actual customers that enables existing industries in the area to use natural gas and induces new industries to locate in the area. Such a price is one which is competitive with other fuels, i.e., a price that provides savings in fuel costs.

Natural gas which cannot be competitively priced is no inducement to existing or new industries and under such conditions the economic problems of the region remain. *But for the discrimination imposed by the Commission on the Upper Peninsula, natural gas could be priced competitively.* The unlawful discrimination in this case, which consists of placing the full burden of the cost of the branch line from Menominee entirely upon the Upper Peninsula *and* requiring it to pay the same rate paid by all other customers who are relieved of the burden of the cost of the branch lines in whole or in part, results in a price for gas so high as to make the gas virtually unsalable and to destroy the economic basis of the project.

As noted *supra*, p. 4, the mining industry in the Upper Peninsula, on which the area's economy is presently largely dependent, is struggling for existence because of the severe

competition of high-grade iron ore imported from abroad and of ores developed in other regions in the Lake Superior district, particularly on the Mesaba range where competitively-priced natural gas is available to the iron ore industry. The ability of the Upper Peninsula's iron ore mining industry to meet this competition through the pelletizing or conversion process depends on the grade and desirability of the product produced and the price at which it can be sold in the open market (R. 21). The cost of the fuel used to develop the heat in the conversion process is a critical element determining whether the iron ore industry can meet this competition—can indeed survive (R. 25, 125).[12] The importance, therefore, of the availability of natural gas—the ideal fuel for the purpose—priced to permit the manufacture of a product that can compete quality wise and price-wise—is thus crucial (R. 25). The discrimination imposed upon the Upper Peninsula prevents this.

The availability of natural gas, priced competitively to produce savings in fuel costs, would also attract industry to the area which, as already noted, has a bountiful supply of natural resources, including timber and copper. In almost all industrial companies a very substantial and significant part of their cost of operations—and consequently of their products—is the cost of fuel used for space heating and in the manufacturing process. It has been the general experience of other areas following the introduction of competitively-priced natural gas that industries have lo-

[12] The economic well-being and survival of the Upper Peninsula's iron ore mining industry is essential to the national defense (R. 25). In the event of war, the foreign supplies of ore might well be cut off, in which case, the defense industries of this country, "would be absolutely dependent upon domestic production" (R. 25).

cated there.[14] The Upper Peninsula has been shunned because it could not offer natural gas at all (R. 126-127); the situation will not be improved unless the natural gas it can offer is competitively priced.

3. That the Commission's order here results in unlawful discrimination is clear under the Commission's own precedents. In *Michigan Wisconsin Pipe Line Co.*, 9 F.P.C. 127 (1950), where Mich Wis had proposed that three companies (including Michigan Gas) should "take delivery at Michigan-Wisconsin's pipeline system * * * [and] pay the same rate other customers will pay who receive delivery at the city gates of the communities served by them or at another requested point of delivery" (9 F.P.C. at 135), the Commission unequivocally held that this proposal would

> result in undue discrimination against these three distributing customers and will give an undue preference and advantage to other customers of Michigan Wisconsin (*Ibid.*).[15]

The conditions of service there condemned by the Commission are identical to those here directed by the Commission for the service to the Upper Peninsula. Tracking Mich Wis' proposal in the earlier case, the Commission has here provided that the Upper Peninsula should receive only delivery at Mich Wis' pipeline (at Menominee) and

---

[14] In investigating areas for possible location of plants, industrial corporations are vitally interested in the types of fuels that are available in a given area and their cost. As would be expected, industrial corporations are attracted to areas that have good fuel supplies at prices that would provide significant savings. With its many desirable features that other fuels do not possess, industry has been attracted to areas that have natural gas priced to produce such savings.

[15] See, also, *Northern Natural Gas Company*, 11 F.P.C. 174 (1952); *San Juan Pipe Line Co.*, 9 F.P.C. 170, 185 (1950); *Otter Tail Power Co.*, 2 F.P.C. 134, 140-145 (1940); *Panhandle Eastern Pipe Line Co.*, 10 F.P.C. 328, 339 (1951).

pay the same rate that all other customers of Mich Wis pay for delivery at the end of a branch line constructed by Mich Wis all the way to the city gate or that distance required by the application of the so-called "10-cent" formula. Thus, only the Upper Peninsula, under the Commission's order here involved, must bear solely and directly the full $8,000,000 cost of the branch line from Menominee.[16] In sharp contrast the areas served by all other customers of Mich Wis bear only the cost, if any, of that part of the branch line constructed by Mich Wis. The cost of the branch lines constructed by Mich Wis becomes a system cost shared by all of Mich Wis' customers, including Michigan Gas in its Lower Peninsula operations.

Mich Wis' branch-line extension practice here denied only to the Upper Peninsula and under which all customers of Mich Wis share with other new market areas the cost of the line to those areas was adopted and has been followed to make natural gas service possible for all areas on the Mich Wis system.[17] It constitutes an integral part of the terms of service to which a customer paying Mich Wis' rate is entitled, for the rate is admittedly designed to recover Mich Wis' investment in such branch lines (R. 52-53; see, also, R. 433).

The unlawful discrimination visited against the Upper Peninsula is highlighted by the other actions taken by the Commission in the very order here under review. In this order, the Commission authorized Mich Wis to construct

[16] Of the $8,000,000 total cost, Mich Wis would be required, under its branch-line extension practice, to construct a part of the line at a system cost of about $4,500,000. The Upper Peninsula would bear the balance directly and solely.

[17] Michigan Gas has never objected to sharing these costs by way of the rates paid by it in the Lower Peninsula area, and this has helped other areas in Michigan, and particularly Wisconsin, secure natural gas on an economic basis which would not otherwise have been possible.

a branch line, 71 miles long, to provide city-gate service to three communities in the Wisconsin River Valley (Wausau, Antigo and Merrill). In addition, the Commission directed Mich Wis to furnish gas to several other new communities, and, as to them, unlike the Upper Peninsula, required Mich Wis to construct branch lines under its so-called "10-cent" formula.[18] Since Michigan Gas, as a customer of Mich Wis in the Lower Peninsula, must share in the cost of the lines constructed by Mich Wis for these communities, the discrimination against the Upper Peninsula becomes all the more egregious.

4. Although the Commission's direction that Mich Wis deliver gas for the Upper Peninsula only at the pipeline (Menominee) at a rate providing for delivery at the terminus of a branch line constructed by Mich Wis patently resulted in unlawful discrimination against the Upper Peninsula under the Commission's own precedents, the court below assumed, as the Commission had done earlier, that rejection of Michigan Gas' alternative suggestions for the elimination of this discrimination was dispositive.[19]

Michigan Gas advanced its suggestions in the sincere belief that the adoption of either of them would result in

---

[18] The Commission's suggestion, that Mich Wis' investment in main line facilities to Menominee, allegedly solely for the Upper Peninsula, discharged whatever obligation Mich Wis might have in this regard (App. A, *infra*, p. 3a; R. 376), aggravates the discrimination against the Upper Peninsula. In no other instance has the Commission taken into account main line investment in directing Mich Wis to extend its branch-line practice to the area involved. In any case, even if such investment could properly be so taken into account, it falls far short of constituting the full measure of Mich Wis' participation under the 10-cent formula.

[19] The Commission's confusion of the unlawful discrimination with Michigan Gas' suggestions for its elimination is exemplified by the Commission's failure to treat the two matters separately. See R. 376-377.

equal, not favored treatment for the Upper Peninsula.[20] However, the Commission's rejection of these suggestions in no way operated to minimize or dissipate the unlawful discrimination. The unlawful discrimination exists separate and distinct from Michigan Gas' suggestions and while the discrimination was the *raison d'etre* for these suggestions, their rejection still left the discrimination fully operative against the Upper Peninsula. Thus, even if acceptance of Michigan Gas' suggestions would have unduly tipped the balance in favor of the Upper Peninsula, as the Commission held, there still remained upon the Commission the duty imposed by Section 4(b) of the Act to eliminate the unlawful discrimination. See *supra*, pp. 10-12.

With the rejection of Michigan Gas' suggestions, therefore, the Commission was still obligated under the Act to take appropriate steps to eliminate the prohibited discrimination on the basis of the record already made, or, if it deemed the record inadequate for that purpose, to reset the case for hearings on that issue. As Commissioner Connole stated in his dissent on rehearing (R. 446-447):

> I dissent from so much of the order that denies reconsideration of our earlier position on service to the upper peninsula of the State of Michigan. I believe the application for rehearing filed by Michigan Gas and Electric Company sets forth sound grounds on which to conclude that our action taken in Opinion No. 331 makes for unlawful discrimination and should be eliminated. At least, it seems to me, a reopening of this proceeding should be permitted. I believe the ACQ-1 rate requires the availability of service to Michigan Gas and Electric without the obligation on its part to build the connecting line, or if it does build the line, that it be required to do so under the terms

---

[20] In an effort to meet the Commission's objectives that one of the two suggestions unduly tipped the balance in favor of the Upper Peninsula, Michigan Gas suggested a third way for eliminating the discrimination (R. 413). The Commission, however, pre-emptorily brushed this suggesti. n aside (R. 438).

> of a formula, either consistent with the so-called "10¢ formula" or consistent with the terms of a formula developed on a record after rehearing on that issue alone.

Subsequently, in another case involving an application by Mich Wis to construct and operate a 48-mile branch line from Madison, Wisconsin, to Baraboo, Wisconsin, in order to provide city-gate service to another sister company, Milwaukee Gas Light Company, the Commission adopted the very position advanced by Commissioner Conole that inapplicability of the "10-cent" formula did not end the matter. In that case, Mich Wis in justifying its proposal to construct the entire branch line, contended that the "10-cent" formula (under which only a minor part of the line would be constructed by Mich Wis) was inapplicable to a branch line of such length. The Commission accepted this contention but rejected Mich Wis' application. In so doing, it held that "an acceptable formula" for "longer laterals" must be shown. The absence of such a formula, the Commission pointed out, left "open the door to unlimited discrimination" and clear unfairness to "existing and potential customers" of Mich Wis. *Michigan Wisconsin Pipe Line Co.*, Docket No. G-20572, Opinion No. 345, issued June 28, 1961, mimeo ed., pp. 9-10. Such is precisely the result of the Commission's dereliction of duty here.

The court below plainly erred, therefore, in failing to remand the case to the Commission for further proceedings, including further hearings if the Commission deemed the present record inadequate, directed at devising a proper means of eliminating the unlawful discrimination inherent in requiring Michigan Gas to pay for gas left for the Upper Peninsula at Menominee, many miles from the Upper Peninsula's market area, at the same rate paid by all other customers of Mich Wis for gas delivered at the termini of branch lines constructed by Mich Wis in accordance with its branch line practice.

CONCLUSION

The failure of the Commission to discharge its full responsibilities to eliminate undue discrimination, which seriously impedes the economic growth of a large part of the State of Michigan, presents a question of importance both generally and in the administration of the Natural Gas Act. For these reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

REUBEN GOLDBERG
314 Riddell Building
Washington 6, D. C.

MELVIN RICHTER
826 Pennsylvania Building
Washington 4, D. C.

Attorneys for Petitioner,
Michigan Gas and Electric Company

August, 1961

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,592

MICHIGAN GAS AND ELECTRIC COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT
MICHIGAN WISCONSIN PIPE LINE COMPANY, INTERVENOR

Petition to Review Orders of the
Federal Power Commission

Decided April 20, 1961

Mr. Reuben Goldberg, with whom *Mr. Melvin Richter* was on the brief, for petitioner.

Mr. David J. Bardin, Attorney, Federal Power Commission, with whom *Messrs. John C. Mason*, General Counsel, Federal Power Commission, *Howard E. Wahrenbrock*, Solicitor, Federal Power Commission, and *Robert L. Russell*, Assistant General Counsel, Federal Power Commission, were on the brief, for respondent.

Mr. Charles F. Shannon, with whom *Mr. Louis Flax* was on the brief, for intervenor.

Before WILBUR K. MILLER, Chief Judge, and EDGERTON and DANAHER, Circuit Judges.

WILBUR K. MILLER, *Chief Judge*: The Michigan Gas and Electric Company distributes manufactured gas at retail in several communities in the Upper Peninsula of Michigan. For the purpose of obtaining natural gas for its distribution systems, it intervened in the proceedings before the Federal Power Commission in which Midwestern Gas Transmission Company was seeking authority to import natural gas from Canada and in which Midwest-

ern and Michigan Wiconsin Pipe Line Company were seeking authority to construct and operate various facilities for further transmission of the gas so imported.

Michigan Gas proposed to the Commission alternative methods by which its properties could receive the desired supply of natural gas, both of which involved pipe line construction into the Upper Peninsula from Menominee, the most northern point of the system of Michigan Wisconsin.

First, it suggested that Michigan Wisconsin be required to construct and operate a pipe line from Menominee to its various city gates, and to sell and deliver gas to it at those points at the ACQ-1 rate schedule, which is applicable to all other customers of Michigan Wisconsin.[1]

---

[1] Michigan Gas urged that this substantial extension of facilities by Michigan Wisconsin would be consistent with the latter's so-called 10-cent formula, which was being used by Michigan Wisconsin as a convenient yardstick in determining the economic feasibility of constructing comparatively short laterals to serve small communities located near its existing main pipe lines.

This formula "provides that the operating costs of the lateral, or the portion of the lateral, to be installed by Michigan Wisconsin shall not exceed 10-cents per Mcf on the basis of the estimated annual firm sales to the distribution project in the third year. In the formula, the operating costs are set out at 15% of the estimated cost of construction of the lateral, or portion of the lateral and appurtenant facilities, as follows:

Return	6.0%
Income Taxes	3.0%
General Taxes	1.5%
Depreciation	3.5%
Operation and Maintenance	1.0%
	15.0%

Michigan Wisconsin Pipe Line Co., et al., 21 F.P.C. 552, 558, n. 5 (1959).

Second, Michigan Gas suggested as an alternative that it construct a pipe line from Menominee to its city gates, and take delivery at Menominee, but at the DCQ rate, which is lower than the average rate paid by other customers of Michigan Wisconsin under its system-wide ACQ rate schedule.

In rejecting the first of these proposals, the Commission noted that under it Michigan Wisconsin would be required to invest four and one-half million dollars in a new pipe line from Menominee northwardly to the scattered properties of Michigan Gas. It found that, instead of having been used in the consideration of such substantial extensions, the so called 10 cent formula is in general applicable to relatively short laterals; and that the maximum distance Michigan Wisconsin has built under it in the past is a line some seventeen and one-half miles long at a cost of approximately $300,000. The Commission further noted that, under the first proposal of Michigan Gas, Michigan Wisconsin would be obligated to invest the additional sum of nearly two and one-half million dollars in adding capacity to the line from Waupaca, Wisconsin, to Menominee, which is now merely a lateral, solely to provide service to the Upper Peninsula. The Commission therefore found that adoption of this proposal would impose an excessive burden on the existing customers of Michigan Wisconsin.

As to the second of petitioner's alternative proposals, the Commission found that if Michigan Gas were permitted to purchase gas at Menominee under the DCQ rate, the result would be discrimination against the existing customers of Michigan Wisconsin, and summarized its reasoning by adopting this language from its staff's brief:

> Finally, there are certain areas of this country which are situated in unfortunate geographical locations in relation to the availability of natural gas. It is no fault of these areas that they happen to be victims of geography. On the other hand, the existing customers can hardly be required to pay excessive

> costs just to make certain that the areas which are located a great distance from the source of supply may have the benefits of natural-gas service. The hard realities of such circumstances are that those areas must be willing to pay the costs associated with obtaining natural-gas service or be satisfied with other fuels which may be less desirable but which may be more economical than natural gas."

Having rejected these proposals, the Commission directed Michigan Wisconsin to deliver natural gas to Michigan Gas at Menominee in volumes sufficient to serve the Upper Peninsula distribution systems, and to charge therefor the uniform rate applicable to all customers of Michigan Wisconsin.[2] Thus, although Michigan Wisconsin was not required to construct the expensive facilities necessary to connect Menominee with the city gates in the Upper Peninsula, it was required to bear the cost of enlarging the capacity of the lateral from Waupaca to Menominee.

Dissatisfied with the Commission's action, Michigan Gas petitions for review of so much of the order as relates to it. It charges that unlawful discrimination against consumers in the Upper Peninsula will result, in violation of Section 4(b) of the Natural Gas Act. It asks this court to set aside the portion of the order of which it complains, and to remand the case to the Commission with directions to enter an order directing Michigan Wisconsin to deliver gas to the petitioner under either of the two alternative proposals which petitioner advanced before the Commission and which were rejected as contrary to the public interest.

---

[2] The Commission's order accompanying its opinion of October 31, 1959, also authorized the Midwestern Gas Transmission Company to import gas from Canada, authorized Midwestern and Michigan Wisconsin to construct and operate various facilities not material to the matter under consideration, and ordered service to Michigan Gas on the basis indicated.

It is obvious that either of the proposals of Michigan Gas would unduly discriminate in its favor, and would impose an undue burden upon the other customers of Michigan Wisconsin. The findings of the Commission are adequately supported by the record, and we cannot say they are clearly erroneous. This court stated in *Battle Creek Gas Co. v. Federal Power Comm'n*, 108 U. S. App. D. C. 209, 213, 281 F. (2d) 42 (1960):

> "The role of reviewing courts in passing on the rate-making methods used by administrative agencies is necessarily narrow. These matters are properly for the Commission, and its determination is to be disturbed for only the most basic forms of abuse."

The same may be said about the present order which deals with rates and service. Since we find no abuse on the part of the Commission, its order must be upheld.

Affirmed.

APPENDIX B

(Filed April 20, 1961)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,592

September Term, 1960.

MICHIGAN GAS AND ELECTRIC COMPANY, *Petitioner*,

v.

FEDERAL POWER COMMISSION, *Respondent*,
MICHIGAN WISCONSIN PIPE LINE COMPANY, *Intervenor*.

On Petition to Review Order of the Federal Power Commission.

Before: Wilbur K. Miller, Chief Judge, and Edgerton and Danaher, Circuit Judges.

Judgment

This case came on to be heard on the record from the Federal Power Commission, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this court that the order of the Federal Power Commission on review in this case is affirmed.

Per Chief Judge Wilbur K. Miller.

Dated: April 20, 1961.

APPENDIX C

(Filed June 1, 1961)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1960

No. 15,592

MICHIGAN GAS AND ELECTRIC COMPANY, *Petitioner*,

v.

FEDERAL POWER COMMISSION, *Respondent*,
MICHIGAN-WISCONSIN PIPELINE COMPANY, *Intervenor*.

Before: Wilbur K. Miller, Chief Judge, Edgerton, Prettyman, Bazelon, Fahy, Washington, Danaher, Bastian and Burger, Circuit Judges, in Chambers.

Order

Upon consideration of petitioner's petition for a rehearing en banc, it is

ORDERED by the court that the petition for rehearing en banc is denied.

Dated: June 1, 1961